

REMARKS

The issues outstanding in this application are as follows:

- Claims 16-21 and 24 are rejected under 35 USC 112;
- Claim 26 is objected to under 37 C.F.R. 1.75(c); and
- Claims 9-10 and 14-26 are rejected under 35 U.S.C. § 103(a).

35 USC § 112

Claims 16-21 and 24 are rejected under 35 USC 112, second paragraph as being indefinite for failing to distinctly claim the subject matter of the invention. The omitted term “package” has been added to claims 16-21 and claim 24 has been amended to overcome this rejection. Applicant respectfully submits that this rejection is now moot.

37 C.F.R. § 1.75(c)

Claim 26 is objected to under 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claim 26 has been amended to restate the use of one compostable sheet.

35 USC § 103(a)

Claims 9-10 and 14-26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,893,672 to Ingraham in view of U.S. Pat. No. 5,854,304 to Garcia et al. Applicant respectfully traverses this rejection.

Ingraham is directed to a seven-layer non-EVOH film structure having six layers of alternating nylon and adhesive, and a seventh layer of a heat sealable polymer. Either the sixth layer comprising the adhesive or the seventh layer comprising the heat sealable polymer may further comprise a polymer, preferably polybutylene, polypropylene or high density polyethylene, that may allow the film structure to be easily peelable. Fig. 3 illustrates the food package of Ingraham with the peelable seal 60.

FIG. 3

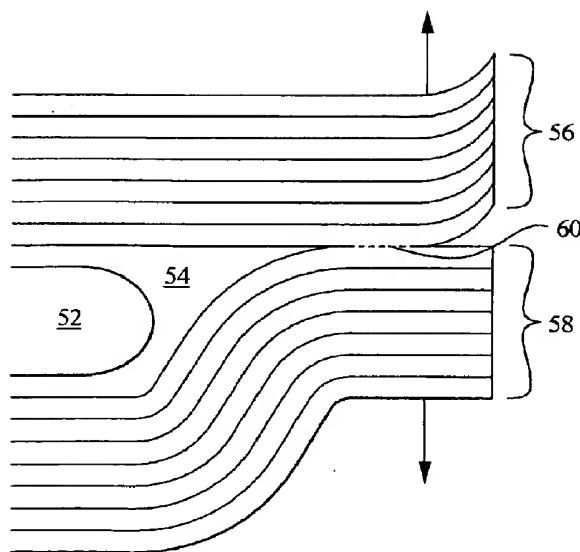


FIG. 3 illustrates the food package with a food product 52 contained within a space 54 created within two film structures 56, 58. The two film structures 56, 58 are each composed of seven layers and may be heat-sealed together at 60 to form the food package. The food product 52 may be a frozen pizza that is substantially round in shape. The film structure 58 may be a thermoformed into a tray shape by the application of heat to create a "dish" or tray shape for the frozen pizza to sit on. The film structure 56 may be a lid that may be heat sealed to the film structure 58 around a perimeter of the film structure 58 to form the space 54. The top web and the bottom web may be heat sealed together at a temperature of between about 130° C and 200° C, preferably about 165° C to form the seal 60.

Garcia et al. is directed to the addition of degradable/compostable compounds combined together for adding to polyolefin resins used in the manufacture of packaging materials to make the specific packaging product degradable/compostable. The additive packages are a combination of a metal carboxylate and an aliphatic poly hydroxy-carboxyl acid. The additive packages are tailored for a specific packaging product, e.g. trash bag, compost bag, merchant bag, diaper liner, wrapping film, agricultural film, landfill cover or foamed planks, produced with a specific polyolefin resin.

Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), controls the consideration and determination of obviousness under 35 U.S.C. 103(a); *KSR Int'l Co. v.*

Teleflex Inc., 127 S. Ct. 1727, 1734-35, 167 L. Ed. 2d 705, 715 (U.S. 2007). The four factual inquiries enunciated therein for determining obviousness are: (1) determining the scope and contents of the prior art; (2) ascertaining the differences between the prior art and the claims in issue; (3) resolving the level of ordinary skill in the pertinent art; and (4) evaluating evidence of secondary considerations.

In this case, neither the level of ordinary skill in the art, nor secondary considerations are at issue. However, in order to assess the scope and content of the prior art properly, a thorough understanding of the invention must be acquired by studying Applicant's claims and the specification. M.P.E.P. § 2141. Thus, the inquiry begins with construction of Applicant's claims, explained below. Next, when ascertaining the differences between the prior art and the claims at issue, both the invention and the prior art references as a whole must be considered, and *all* claim limitations must be considered when determining patentability of Applicant's invention. M.P.E.P. §§ 2141; 2143. When this is properly done in this case, as shown below, it becomes clear that differences exist that preclude obviousness. And finally, the test for obviousness requires identification of a reasonable basis for combining the claimed elements in the claimed fashion. *KSR*, 127 S. Ct. at 1741; M.P.E.P. §2143. As shown below, this requirement is not met in this case, and no *prima facie* case for obviousness is made.

Applying the proper test to this case begin with independent claim 14 which requires 1) two compostable sheets, each sheet comprising an outer substrate layer and an inner multilayer sealing film, 2) the inner sealing film having a core of a high-melting-point and a surface layer of a lower melting point, 3) the sheets each having a top and bottom seam and side edge seams, 4) wherein the two sheets are bonded together in a face-to-face relationship in which the top and side edge seams are bonded together with a high sealing strength using temperatures higher than 160° C and the bottom seams are bonded with a low sealing strength using temperatures of about 100° C to 150° C. Independent claim 22 is directed to a method that includes all of the above elements.

The prior art does not teach an environmentally friendly package that includes all of the recited elements. Ingraham is directed to seven-layer non-EVOH film structure having six layers of alternating nylon and adhesive, and a seventh layer of a heat sealable polymer.

To form a food package, two film structures 56, 58, each composed of seven layers, are heat-sealed together. Film structure 56 is placed on top of a food item and the second film structure 58 is placed underneath the food item in which the seventh heat sealable layer of each film structure is face-to-face. The seventh sealable layer of the top film structure 56 is heat sealed to the seventh sealable layer of the bottom film structure 58 around a perimeter of the film structure 58 to form the space 54. The top and bottom webs are heat sealed together at a temperature of between about 130° C and 200° C, preferably about 165° C.

Ingraham does not teach compostable sheets, in which each sheet comprises an outer substrate layer and an inner multilayer sealing film. Ingraham instead teaches a seven-layer non-EVOH film structure that has six layers of alternating nylon and adhesive, and a seventh layer of a heat sealable polymer.

Ingraham does not teach an inner sealing film having a core of a high-melting-point and a surface layer of a lower melting point. Ingraham has only one sheet composed of a heat sealable polymer, the seventh sheet, which has one melting-point.

In Ingraham there is no teaching, disclosure or suggestion of packaging having top, bottom, and side edge seams as the food item to be packaged defines the outer edges of the packaging. This is because Ingraham is directed to the packaging of food products such as frozen pizza, frozen vegetable and other frozen foods in which the food item is placed between two webs and the perimeter of the webs, surrounding the food item, is heat sealed forming a space for the food item in the center of the web. The perimeter most likely will be circular or irregular.

Further, because there is no teaching in Ingraham of packaging having top, bottom, and side edge seams, there is no teaching, disclosure or suggestion of two sheets bonded together in a face-to-face relationship in which the top and side edge seams are bonded together with a high sealing strength using temperatures higher than 160° C and the bottom seams are bonded with a low sealing strength using temperatures of about 100° C to 150° C. In the Ingraham food packaging, there would be no reason for one skilled in the art to bond together one portion of the perimeter of the webs using temperatures higher than 160° C and another portion of the perimeter of the webs using temperatures of about 100° C to 150° C.

In fact doing this could hinder the peelable seal mechanism that is a feature of the Ingraham packaging.

Modifying the Ingraham packaging with the compostable packaging of Garcia et al. does not cure the deficiencies of Ingraham. Additionally, modifying the Ingraham seven-layer non-EVOH film structure having six layers of alternating nylon and adhesive, and a seventh layer of a heat sealable polymer by the addition of the Garcia combination of a metal carboxylate and an aliphatic poly hydroxy-carboxyl acid to the non-EVOH film resins will destroy the function of the Ingraham film structure.

In order to make a proper *prima facie* case for obviousness, all claim limitations must be accounted for. M.P.E.P. § 2143.03. As discussed above, this rejection fails to consider all elements of the claims and their meaning as the cited references do not include all elements of independent claims 14 and 22. Thus, the claims are erroneously rejected over the cited references and Applicant respectfully requests the rejection be removed. Applicant respectfully asserts that modifying the teaching of Ingraham with the Garcia et al. reference will not provide the environmentally friendly package and method of independent claims 14 and 22. Therefore, Applicant respectfully submits that independent amended claims 14 and 22 are not obvious.

If an independent claim is non-obvious under 35 U.S.C. 103, than any claim depending therefrom is by definition non-obvious. Applicant respectfully submits that claims 9-10, 15-21 and 23-26 depend at least in part from amended independent claims 14 or 22. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 9-10 and 14-26 under 35 U.S.C. 103(a) as having subject matter unpatentable over U.S. Pat. No. 6,893,672 to Ingraham in view of U.S. Pat. No. 5,854,304 to Garcia et al.

CONCLUSION

In view of the above, Applicant believes the pending application is in condition for allowance.

Applicants believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P03292US0 from which the undersigned is authorized to draw.

Dated: November 8, 2011

Respectfully submitted,

Electronic signature /Jan K. Simpson/
Jan K. Simpson
Registration No.: 33,283
FULBRIGHT & JAWORSKI L.L.P.
Fulbright Tower
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
(713) 651-5151
(713) 651-5246 (Fax)
Attorney for Applicant